

BEFORE THE
SOUTH CAROLINA PUBLIC SERVICE COMMISSION

IN RE:)	
)	
Analysis of Continued Availability of Unbundled)	DOCKET 2003-326-C
Local Switching for Mass Market Customers Pursuant)	
to the Federal Communications Commission's)	Filed: March 12, 2004
Triennial Review Order)	
_____)	

REBUTTAL TESTIMONY AND EXHIBITS OF
JOSEPH GILLAN
ON BEHALF OF COMPSOUTH
****PUBLIC VERSION****

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I. Introduction

- Q. Please state your name and the party you are representing.**
- A. My name is Joseph Gillan. I filed direct testimony on behalf of CompSouth in this proceeding.
- Q. What is the purpose of your rebuttal testimony?**

A. The principal purpose of my rebuttal testimony is to address the claim by BellSouth that there is sufficient mass market local competition by switch-based CLECs in South Carolina to justify finding that the FCC-described “triggers” are satisfied. Among other deficiencies, BellSouth counts enterprise switches as mass market switches in violation of the TRO,¹ ignores whether carriers are *actively providing* mass market services today, and relies upon trivial levels of competitive activity that are far smaller than the FCC already *rejected* as evidence of non-impairment.

The Commission’s evaluation of potential trigger candidates must not be taken lightly. As the FCC explained, the purpose of its trigger analysis is to consider whether “actual marketplace evidence shows whether new entrants, as a practical matter, have surmounted barriers to entry in the relevant market,”² so that “...it is feasible to provide service without relying on the incumbent LEC.”³ Or, more simply: “If the triggers are satisfied, the states need not undertake any further inquiry, because no impairment should exist in that market.”⁴

¹ Report and Order and Order on Remand and Further Notice of Proposed Rulemaking, CC Docket Nos. 01-338, 96-98 and 98-147, Released August 21, 2003 (“Triennial Review Order” or “TRO”).

² TRO ¶ 99.

³ TRO ¶ 93.

⁴ TRO ¶ 494, emphasis added.

The FCC provided the states with the guidance and latitude to apply the triggers in a manner true to their purpose. A faithful application of the triggers should produce outcomes consistent with the FCC's own findings – that is, where a state commission observes facts that are comparable to data that the FCC used to find impairment, then that *same* set of facts cannot be abused in a “trigger analysis” to reverse that finding. The FCC was clear that the states were to apply judgment in the same manner as the FCC: “To ensure that the states implement their delegated authority in the same carefully targeted manner as our federal determinations, we set forth in this Order federal guidelines to be applied by the states in the execution of their authority pursuant to federal law.”⁵ Arriving at consistent decisions when presented with consistent facts is an important feature of the TRO.

The level and form of competitive activity cited by BellSouth in this proceeding – even if their data is accepted as accurate -- is no different than that which the FCC rejected in the TRO as being adequate proof of non-impairment. Even if all of the UNE loops provided by BellSouth are assumed to be mass market – and, as my testimony explains below, UNE-L carriers are actually focused on offering enterprise and not mass market services – the competitive share of UNE-L is less than 1%.⁶ The FCC was well aware that *some* analog loops were being purchased

⁵ TRO ¶ 189.

⁶ Source: BellSouth Form 477 Local Competition Filings with the FCC.

by CLECs, however, yet it *repeatedly* rejected claims that trivial levels of UNE-L activity (including levels larger than BellSouth shows here) justified a finding of non-impairment.⁷

As I explain below, the facts show that the mass market switching triggers have not been satisfied in South Carolina. BellSouth's claims that it should be excused from its federal obligation under section 251 of the Act to offer unbundled local switching should be denied.⁸

Q. In addition to responding to BellSouth's claims regarding the self-provider switch trigger candidates, does your rebuttal testimony address any other issues?

A. Yes. In addition to evaluating the trigger assertions by BellSouth, the rebuttal testimony also addresses:

* The appropriate "market area" that the Commission should use for the evaluation of impairment, and

⁷ As I discuss later in this testimony, we have not yet located in BellSouth's data responses the summary workpaper that Ms. Tipton provided in other states. Because this data is necessary to evaluate BellSouth's trigger claims, we must reserve the opportunity to file supplemental testimony once this issue is resolved.

⁸ As explained in my direct testimony, BellSouth remains obligated to offer unbundled local switching under section 271's competitive checklist.

- * The appropriate DS0 to DS1 crossover point that sets the
“regulatory” upper limit of the mass market.

As the testimony below explains, the Commission should reject BellSouth’s proposal to use “component economic areas” (CEAs) to define the relevant geographic area of the mass market. These areas have nothing to do with telecommunications – indeed, prior to BellSouth’s testimony in this proceeding, the Commission would have been hard pressed to find anyone in the industry that was even familiar with the term. The Commission should instead adopt a larger area that more closely reflects the broad nature of the mass market, such as the LATA boundaries that have defined South Carolina’s “exchange markets” for the past two decades.

With respect to the “DS0-to-DS1” crossover, I recommend that the crossover in the testimony of Mark Argenbright should be adopted. The calculation provided by Mr. Argenbright is consistent with the approach described in my direct testimony and reasonably estimates the boundary line between the “enterprise” and “mass market” as required by federal rules, albeit an estimate that is (as explained in my direct testimony) likely to be conservative and potentially too

low.⁹ The specific calculation is based on an analysis performed by Sprint in Florida and, as a result, is implicitly endorsed by an incumbent. The Commission should not – indeed, it cannot -- adopt BellSouth’s proposed “3-line cutoff,” which is not supported by any evidence in this proceeding and, therefore, violates the requirements of the TRO.¹⁰

Q. Before turning to these specific issues, do you have a preliminary comment?

A. Yes. If there is a single exhibit that captures the core debate in this proceeding, it is Exhibit JPG-4 (attached). Exhibit JPG-4 compares the competitive lines added by UNE-P and UNE-L, by wire center, throughout the state of South Carolina over the past six months.¹¹ This exhibit best compares the level and geographic reach of the local competition currently underway in South Carolina through the two relevant entry strategies, UNE-L (loops *without* switching) and UNE-P (loops *with* switching). The difference between UNE-P and UNE-L could not be more striking – and it is this difference that is made possible by access to unbundled local switching. As JPG-4 shows, UNE-P is actively bringing local choice to

⁹ Given all this issues that need to be addressed in this proceeding, devoting additional time and resources to further perfect this calculation is not warranted at this time.

¹⁰ The TRO makes clear (§ 497, emphasis added) that “... a state must determine the appropriate cut-off for multiline DSO customers as part of its more granular review.”

¹¹ Source: BellSouth Response to CompSouth No. 3 and AT&T No. 56.

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every BellSouth exchange in the state, no matter how large or small. In contrast, UNE-L is simply incapable of achieving anything on this scale.

In its simplest form, BellSouth is asking the Commission to conclude, based on the activity of UNE-L (the bottom chart on JPG-4), that UNE-P (the top chart) is not needed in South Carolina. Exhibit JPG-4 graphically illustrates the absurdity of that position (although it is equally clear from the exhibit why BellSouth would want the Commission to reach that conclusion – eliminate UNE-P and BellSouth’s local monopoly is restored). Using the nomenclature of the TRO, the difference between the upper and lower graphs provides a vivid illustration of the impairment that constrains UNE-L that is overcome through access to unbundled local switching (thereby making UNE-P possible).

Q. Is UNE-P critical to both mass market residential and mass market business customers?

A. Yes. Table 1 analyzes the same data concerning the most recent competitive activity to determine the importance of unbundled local switching to residential and business customers in each of South Carolina’s LATAs.

Table 1: Current Competitive Activity in BellSouth LATAs
(Most Recent Six Months – April to Sept. 2003)

BellSouth LATA	Share Gain by Method		UNE-P Share by Customer	
	UNE-P	UNE-L	Residential	Business
Augusta	5.3%	0.0%	6.2%	4.4%
Charleston	4.6%	0.3%	5.7%	3.8%

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Charlotte	4.0%	0.0%	4.2%	5.3%
Columbia	5.5%	0.1%	6.6%	4.3%
Florence	6.7%	0.0%	8.9%	4.7%
Greenville	5.2%	0.1%	6.2%	4.8%
Statewide	5.2%	0.1%	6.3%	4.4%

As Table 1 demonstrates, competitive activity from UNE-P is roughly 44 times that of UNE-L statewide, and even more in a number of LATAs. UNE-P brings competition to more places and more extensively than any alternative. Moreover, UNE-P is just as important to competition for the mass market business customer as it is for the mass market residential customer.¹²

There are a number of complex arguments in this case, but this much should be clear. Congress fully expected local competition would rely upon access to unbundled local switching, specifically listing local switching in section 271's competitive checklist and twice referencing it in the Joint Explanatory Statement that accompanied the Act:

The term “network element” was included to describe the facilities, such as local loops, equipment, such as switching, and the features, functions, and capabilities that a local exchange carrier must provide for certain purposes under other sections of the conference agreement.

¹² I remind the Commission that the “mass market” is defined by the access method – analog or digital – and not the “customer label” used in retail tariffs. Table 1 underscores the fact that UNE-P is a critical entry strategy across the *entire* mass market, including the segment of mass market customers represented by small businesses.

Some facilities and capabilities (e.g., central office switching) will likely need to be obtained from the incumbent local exchange carrier as network elements pursuant to new section 251.¹³

Congress' vision is beginning to emerge in South Carolina (and other states in the nation) precisely as intended – for the average user, in the average community, across the nation. I will explain in more detail below exactly why BellSouth's trigger claims are insufficient to withdraw access to local switching, as well as how the Commission should structure its analysis of the mass market (as to geography and customer size) to comply with the TRO. What should not be lost in the details of these analyses, however, is the fundamental reality that UNE-P is bringing competitive choice to customers that would fall by the wayside if it were not available.

II. Market Definition: Geographic Area and the DS0/1 Cutover

Q. Have you reviewed the proposed geographic areas suggested by BellSouth for the Commission to use in its review of impairment?

A. Yes. BellSouth is recommending that the Commission rely on the Bureau of Economic Analysis' "component economic areas" (CEA). BellSouth further

¹³ Joint Explanatory Statement of the Committee of Conference, Report No. 104-458, 104th Congress, 2nd Session, emphasis added.

recommends that the geographic areas be subdivided according to UNE rate zones.

Q. Do you support either of these approaches?

A. No. First, as I noted in my direct testimony, one of the defining characteristics of the mass market is that mass market customers reside *throughout* South Carolina. Artificially limiting an analysis to only those customers located within “component economic areas” having nothing to do with competitive activity ignores the primary defining characteristic of the mass market as a broadly dispersed customer set.

Q. Should the Commission adopt “component economic areas” as suggested by BellSouth?

A. No. As a threshold observation, after more than 20 years of telecommunications experience dealing with a wide range of competitive issues, I had never come across any mention of the Bureau of Economic Analysis’ (“BEA’s”) “component economic area” until BellSouth’s testimony was filed in these proceedings. Without becoming too caught up in common sense, just how relevant can the

CEA be to market entry and impairment if it had never surfaced in any industry discussion before now?

Second, the BEA's *component* economic areas are exactly that – a “middle step” in the process of defining economic areas that “serve as centers of economic activity.” Not only do these areas have nothing to do with telecommunications, they are not even the final product in the BEA's effort to identify economic areas that include, so far as possible, “the place of work and the place of residence of its labor force.”¹⁴ Although the BEA begins with “component areas,” these are intended to be building blocks that aggregate into economic areas that are “economically large enough to be part of the BEA's local area economic projections.”

This last observation highlights the final problem with the “CEA approach.” The BEA itself has decided that CEAs are not sufficiently large even for *its* purpose of developing projections of economic activity. In effect, BellSouth is claiming that areas that are too *small* for economic modeling are somehow sufficiently *large* that an entrant serving that area alone would be able to take advantage of available scale and scope economies.

¹⁴ For completeness, I have attached as Exhibit JPG-5, an article published in the Survey of Current Business that describes the development of “economic areas,” including the intermediate step of the “component economic area.”

Q. Does it make sense for the Commission to use UNE -- which is to say loop -- rate zones in evaluating impairments associated with unbundled local switching?

A. Generally, no. As the question indicates, UNE rate zones create different rates for the loop element. Although there are modest price differences between loops used individually and loops obtained as part of UNE-P, the effect of deaveraged loop rates should have little effect on the *relative* ability of a CLEC to use (or not use) its own switching to compete. Whether a CLEC is using UNE-P or UNE-L, the constant is the need to purchase the unbundled loop. In other words, while UNE rate zones may affect competition overall, the issue here concerns the relative operational and other barriers to competition for mass market customers that are mitigated by access to unbundled local switching. The consideration of UNE loop rate zones thus has no place in the analysis of impairment as it relates to the availability of unbundled local switching.

Q. Do you have an overall comment about BellSouth's proposed "markets?"

A. Yes. Mass market competition is interdependent – that is, competition in rural wire centers is possible because of competition in suburban wire centers; and competition in suburban wire centers is possible because of competition in urban

centers. It is simply misleading to “force” granularity for the sake of granularity. The fact is that the mass market is not discrete, and it requires – as its very name suggests – *mass* in order for a competitor to succeed. BellSouth’s proposal would subdivide its territory into 16 discrete areas, as though carriers could individually enter as few as one and compete for residential and small business customers. Notably, several CEAs are smaller than many of BellSouth’s wire centers, and BellSouth claims its wire centers are too small to qualify as “markets” under the TRO. Table 2 shows the number of retail lines located in each of BellSouth’s claimed “mass markets” (i.e., each of the 16 discrete areas that it claims should be used for impairment analysis).

Table 2: Access Lines in BellSouth's Proposed Markets
(Markets Where BellSouth Claims Non-Impairment in Bold)

Component Economic Area	Zone 1	Zone 2	Zone 3
Augusta-Aiken	25,798	44,835	19,966
Charleston-North Charleston	243,326		8,022
Charlotte-Gastonia-Rock Hill		22,334	19,811
Columbia	239,107	27,262	46,562
Florence	80,867	15,996	12,591
Greenville-Spartanburg-Anderson	368,056	90,044	42,149

Q. Do you believe that CLECs would approach the mass market in the highly discrete manner claimed by BellSouth?

A. No. The mass market is located throughout the state and the issue (as it relates to the “triggers”) is to determine whether there is sufficient competition *across* that market from alternatives to determine that unbundled access to local switching is not necessary.¹⁵

Although BellSouth’s “market definition” approach is needlessly complex and gratuitously granular, it is essentially irrelevant as well, because even after splitting the state into 16 discrete pieces, BellSouth claims that the triggers are met in so many places it hardly matters. BellSouth combines its preferred market definition with a flawed interpretation of the FCC’s trigger criteria that would have the effect of ending competition statewide. Indeed, BellSouth claims that

¹⁵ I remind the Commission, but do not repeat here, my general caveats concerning BellSouth’s continuing obligations under section 271.

the triggers are met in “markets” containing roughly 70% of its access lines.

Adding those “markets” where BellSouth claims that CLECs are unimpaired based on its “potential deployment” analysis would foreclose UNE-P based competition in roughly 85% of the state.

Q. Would BellSouth’s recommendations essentially close South Carolina to local competition for mass market customers?

A. Yes. As Table 1 shows, UNE-P produces competition at a completely different level and scope than UNE-L. UNE-P brings competition to the heart of the mass market (the residential customer), it brings needed competition to the forgotten mass market customer (the small business), and it brings competition to essentially every BellSouth wire center in the state. As I explained earlier, Exhibit JPG-4 contrasts the share gain of UNE-P to that of UNE-L for each of BellSouth’s wire centers during the most recent six months (April to September, 2003). Exhibit JPG-4 demonstrates that the competitive benefits achieved by UNE-P are both broader and more substantial than that possible without access to unbundled local switching.

Q. What geographic areas do you recommend?

A. I recommend that the Commission use LATAs to evaluate impairment. As I noted repeatedly above, the mass market is spread throughout BellSouth's service territory in South Carolina and *any* lesser area could potentially camouflage the importance of this fact. However, the evidence (see Table 1) suggests that each LATA is sufficiently comparable to the state overall that the Commission's analysis would not be distorted by using these pre-existing areas in its analysis. Other advantages are that LATA boundaries conform to wire center boundaries (which are the fundamental building block of any analysis), the boundaries are well understood (at least within the industry), and the boundaries were once drawn to approximate the "local market" (albeit 20 years ago).

Q. What DS0/DS1 crossover should the Commission use to define the "upper limit" of the mass market?

A. The TRA should adopt a crossover of 10 lines, as demonstrated by the testimony of Mark Argenbright. Mr. Argenbright has applied a formula sponsored by Sprint in the Florida proceeding to South Carolina-specific data. The Sprint/Argenbright calculation complies with the criteria outlined in my direct testimony and is a conservative estimate (i.e., it produces a cut-off that is too low) that fully complies with the TRO's direction that state commissions establish a fact-based cut-off as part of their granular review.¹⁶

¹⁶ TRO ¶ 497.

Q. Do you have any comment on BellSouth's suggestion that the "default" 3-line limit should apply?

A. Yes. BellSouth's proposed "3-line" value violates the TRO's specific direction that the cut-off should be established at the point where "it is economically feasible for a competitive carrier to provide voice service with its own switch using a DS1 or above loop."¹⁷ BellSouth has offered no analysis that demonstrates that 3-line voice customer could be economically served with DS-1 loop. Rather, BellSouth claims that it has "accepted the FCC's default" of 3-lines.¹⁸

Q. Is there a default 3-line invitation for BellSouth to "accept?"

A. No, there is no "default" 3-line cap on the mass market. The FCC explicitly *did not* (except for an interim period during which State Commissions address impairment issues) preserve the "three line" (sometimes called the 4-line) rule, which was a point of controversy with Commissioner Abernathy:

¹⁷ TRO ¶421, n.1296.

¹⁸ Blake Direct, page 8.

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Commissioner Abernathy claims that our decision not to preserve the previous Commission's four-line carve-out represents a "potentially massive expansion" of unbundled switching. *Commissioner Abernathy Statement* at 8 n.27. This claim makes no sense. If a state finds that the appropriate cut-off for distinguishing enterprise from mass market customers in density zone 1 of the top 50 MSAs is four lines, there will be no more unbundled switching available than there was under the previous carve-out.¹⁹

Moreover, the prior limitation applied only in *selected* end-offices (i.e., those Zone 1 end offices in the top 50 MSAs),²⁰ with *no limit* in any other area. Such a structure is incompatible with a crossover point developed based on evidence related to the relative costs of serving customers using analog loops or DS-1 loops and the necessary customer premise equipment and other costs associated with provisioning the DS-1 (even in a simple calculation).

There is no basis to support the claim that 3 lines is a reasonable measure of when a customer should be served by a DS-1 (which provides capacity for 24 lines and requires costly equipment to convert a customer's voice traffic into digital format for multiplexing onto a loop that is significantly more expensive than a simple phone line). BellSouth's "proposal" to accept a non-existent invitation from the FCC must be rejected.

¹⁹ TRO ¶ 497, n. 1546, emphasis added.

²⁰ It should be noted that the "Zone 1" offices are those used by the FCC for special access pricing flexibility, and are not the same as the "Zone 1" used for deaveraged UNE rates.

III. Evaluating the Alleged Mass Market Switching Trigger Candidates

Q. Have you completed your analysis of BellSouth's claims regarding the self-provisioning switch triggers?

A. No. An important element of my review of BellSouth's claimed self-provisioning switch triggers (at least in other states) is a worksheet that summarizes the information relied upon by BellSouth witness Tipton (by carrier, by wire center) in developing her recommendations. Unfortunately, it does not appear that BellSouth has provided that worksheet in response to the same discovery questions in South Carolina as it has in other states.²¹ Importantly, Ms. Tipton's workpapers cannot be evaluated without access to her summary worksheet. Consequently, the following review of BellSouth's claims is preliminary until the summary worksheet is located/provided and I have had the opportunity to review Ms. Tipton's analysis in detail.

Q. Please summarize BellSouth's basic claim that the FCC's triggers have been satisfied.

²¹ My understanding is that the Tipton summary has been provided in response to AT&T Data Requests 113, 114 or 115 in other states.

- A. The essence of BellSouth's testimony is that trigger analysis can be conducted blindfolded, simply by counting to three:

The self provisioning trigger is straightforward: the Commission must find "no impairment" for unbundled switching when three or more unaffiliated competing carriers are serving mass market customers in a particular market²²

BellSouth has reduced the trigger analysis from an examination of actual marketplace conditions to an arithmetic oversimplification that ignores the substantial guidance that the FCC has provided as to *how* the trigger analysis is to be conducted. It is true that the trigger analysis is different than the potential deployment analysis in that it requires that the South Carolina Commission focus on an objective standard (three self-providers) and data regarding the deployment of alternative switching that is actually serving the mass market. That does not mean, however, that the South Carolina Commission is not expected to interpret the data to make sure that each proffered trigger candidate is a "true alternative" that is "...actively providing voice service to mass market customers in the market."²³

- Q. Has the FCC indicated that it expects state commissions to conduct their impairment analysis applying the same analysis as the FCC conducted?**

²² Tipton Direct, page 5.

²³ TRO ¶ 499.

- A. Yes. As I indicated in my introduction, the FCC was clear that it expected states to apply judgment in the same manner as the FCC: “To ensure that the states implement their delegated authority in the same carefully targeted manner as our federal determinations, we set forth in this Order federal guidelines to be applied by the states in the execution of their authority pursuant to federal law.”²⁴

There is nothing in the TRO that suggests the FCC expected the states to apply the trigger analysis in a manner that ignored its guidance, with the result being states reversing the FCC’s national impairment finding by reviewing data no different than the FCC considered. Rather, the FCC expected consistency between its analysis and that of the states, with similar facts producing:

For example, we [the FCC] note that CMRS does not yet equal traditional incumbent LEC services in its quality, its ability to handle data traffic, its ubiquity, and its ability to provide broadband services to the mass market. Thus, just as CMRS deployment does not persuade us to reject our nationwide finding of impairment, at this time, we do not expect state commissions to consider CMRS providers in their application of the triggers.²⁵

²⁴ TRO ¶ 189.

²⁵ TRO ¶ 499, n. 1549, footnotes omitted, emphasis added.

As noted above, where conditions and/or circumstances are comparable to those reviewed by the FCC, the TRO makes clear that the FCC expects the states to reach the same findings as the TRO.

Q. Is BellSouth's claim that the triggers are satisfied in South Carolina consistent with this principle (i.e., that consistent facts should produce consistent findings)?

A. No. Consider the following. According to BellSouth's June 2003 Local Competition report to the FCC, the total market share of UNE-L in its South Carolina exchanges is only 0.9%. This includes loops being used to serve enterprise customers, as well as loops sold to companies not even claimed by BellSouth as triggers. Even if every UNE-L in South Carolina is assumed to be sold to the alleged trigger providers, and further assuming that each UNE-L is being used to provide mass market services, the share is below levels *already* rejected by the FCC as demonstrating non-impairment.

Q. Has the FCC repeatedly reject market activity on the level claimed by BellSouth here as proving non-impairment?

- A. Yes. For example, consider the following claims of low-level competitive activity that all ended with the FCC national finding of impairment for mass market switching:

...the record indicates that competitive LECs have self-deployed few local circuit switches to serve the mass market. The BOCs claim that, as of year-end 2001, approximately three million residential lines were served via competitive LEC switches. Others argue that this figure is significantly inflated. Even accepting that figure, however, it represents only a small percentage of the residential voice market. It amounts to less than three percent of the 112 million residential voice lines served by reporting incumbent LECs.²⁶

We determine that, although the existence of intermodal switching is a factor to consider in establishing our unbundling requirements, current evidence of deployment does not presently warrant a finding of no impairment with regard to local circuit switching. In particular, we determine that the limited use of intermodal circuit switching alternatives for the mass market is insufficient for us to make a finding of no impairment in this market, especially since these intermodal alternatives are not generally available to new competitors.²⁷

The Commission's *Local Competition Report* shows that only about 2.6 million homes subscribe to cable telephony on a nationwide basis, even though there are approximately 103.4 million households in the United States [2.6 percent]. Moreover, the record indicates that circuit-switched cable telephony is only available to about 9.6 percent of the total households in the nation

²⁶ TRO ¶ 438, footnotes omitted, emphasis added.

²⁷ TRO ¶ 443, footnotes omitted, emphasis added.

... it is difficult to predict at what point cable telephony will be deployed on a more widespread and ubiquitous basis.²⁸

Current estimates are that only 1.7% of U.S. households rely on other technologies to replace their traditional wireline voice service.²⁹

We also find that, despite evidence demonstrating that narrowband local services are widely available through CMRS providers, wireless is not yet a suitable substitute for local circuit switching. In particular, only about three to five percent of CMRS subscribers use their service as a replacement for primary fixed voice wireline service, which indicates that wireless switches do not yet act broadly as an intermodal replacement for traditional wireline circuit switches.³⁰

The ILECs have already tried to use low levels of competitive activity as marketplace evidence of non-impairment and the FCC's rejected those attempts with a national finding of impairment. Obviously, it would be inconsistent for the FCC to delegate to the states a trigger analysis that, when applied to data showing the same *de minimus* levels of competitive activity reviewed and rejected by the FCC, produced findings that reversed the FCC's national finding of impairment.

Q. Have you also reviewed each of the individual trigger candidate against the qualifying criteria discussed in the TRO?

²⁸ TRO ¶ 444, footnotes omitted, emphasis added.

²⁹ TRO ¶ 443, n. 1356, emphasis added.

A. Yes (to the extent that I am able to without complete access to Ms. Tipton’s workpapers). The full criteria are addressed in my direct testimony in this proceeding. The reviewing criteria that I recommend are drawn directly from the TRO and parallel, wherever possible, comparable findings and analysis of the FCC. This is precisely the type of analysis that the FCC intended, with the states evaluating local conditions by applying the guidance found in the TRO. The analysis here focuses on the “self-provisioning switching” trigger.³¹ In short form, a self-provisioning trigger candidate must satisfy each of the following:

1. The self-provisioning trigger candidate’s switches must not be “enterprise” switches.
2. The self-provisioning trigger candidate must be actively providing voice service to mass market customers in the designated market, including residential customers, and must be likely to continue to do so.
3. The self-provisioning trigger candidate should be serving mass market customers throughout the market area.
4. The self-provisioning trigger candidate should be relying on ILEC loops or, at the very least, be providing a service that is comparable to the ILEC service in cost, quality, and maturity.

³⁰ TRO ¶ 445, footnotes omitted, emphasis added.

³¹ BellSouth does not claim that there are wholesale carriers in South Carolina (Blake, page 9).

5. The self-provisioning trigger candidate may not be affiliated with the ILEC or other self-provisioning trigger candidates.
6. The existence of the self-provisioning trigger candidate should be evidence of sustainable and broad-scale mass market competitive alternatives in the designated market.

Q. Does your testimony evaluate each trigger candidate against each of these criteria?

A. No. First, it is important to understand that a potential trigger candidate must satisfy each and every criterion in order to be legitimately considered as one-of-three providers sufficient to support a finding that impairment has been overcome in the specific geographic area. Consequently, if a trigger candidate fails any single criterion, it may not be counted as a trigger and further analysis is not necessary. In addition, my review is ongoing as additional information becomes available. Finally, some of the criteria outlined in the TRO – in particular, the “key consideration” as to “whether the providers are currently offering and able to provide service, and are likely to continue to do so”³² – may require a detailed examination of a particular candidate that would be unnecessary if the candidate is disqualified for other reasons.

³² TRO ¶ 500, emphasis added.

Q. BellSouth maintains that the South Carolina Commission is precluded from evaluating “any other factors, such as the financial stability or well-being of the competitive switch providers” in conducting a trigger analysis.³³ Do you agree?

A. Obviously I agree that the sentence does appear in the TRO. Where I part company with BellSouth is with their interpretation that this *single* sentence wipes away every other statement in the TRO that explains how the trigger analysis is to be conducted. For example, consider the paragraph that the sentence introduces in its entirety:

For the purposes of these triggers, we find that states shall not evaluate any other factors, such as the financial stability or well-being of the competitive switching providers. Competing carriers in Chapter 11 bankruptcy protection are often still providing service. Regardless of their financial status, the physical assets remain viable and may be bought by someone else and remain in service. We note that requiring states to determine the financial ability of competitive wholesale providers to provide service in the future could hamper economic recovery efforts of companies in financial distress. The key consideration to be examined by state commissions is whether the providers are currently offering and able to provide service, and are likely to continue to do so.³⁴

³³ Tipton Direct, page 5, citing TRO ¶ 500.

³⁴ TRO ¶ 500, footnotes omitted.

A couple of points are necessary to highlight here. First, when the passage indicates that states should not consider “other factors,” that directive does not suggest that the states should ignore the factors identified in the TRO. The FCC specifically directed that the states are to approach the impairment analysis considering the same types of factors that it applied (“to ensure that the states implement their delegated authority in the same carefully targeted manner as our federal determinations”),³⁵ which necessarily requires that the states consider the same factors that the FCC applied in reaching its findings. Paragraph 500 cannot be read to require that the states ignore factors relied upon by the FCC.

Second, within the very same paragraph that BellSouth cites favorably, the FCC directs the states that “the key consideration” in a trigger review is the ability of the provider to continue to offer service. The only way that this paragraph is internally consistent is if it explains that a *past* bankruptcy is not to be considered, but that any factor that would likely affect the *future* ability of the CLEC to provide service must be a critical part of the analysis. Moreover, as noted above, there is nothing in the passage that suggests that the FCC was directing the states to ignore all the other guidance it provided, including requirements that enterprise switches not be counted, that CLECs relying on their own loops should be

³⁵

TRO ¶ 189.

afforded less weight, and other factors and criteria described in my direct testimony.³⁶

Q. Turning to specific trigger candidates, which CLECs does BellSouth claim are self-providers of local switching to provide mass market services?

A. The following table summarizes the trigger candidates identified by BellSouth:

Table 3: Trigger Candidate

ITC DeltaCom
KMC
NuVox
Xspedius

Q. Have you evaluated the named mass market switching trigger candidates to determine whether they satisfy the criteria in the TRO?

A. Yes. In an effort to determine whether the named trigger candidates satisfy the criteria to qualify as self-provisioning trigger candidates, I investigated (within the limits of the time frame available to me) the types of services these carriers offered to determine whether they satisfied the criteria outlined above.³⁷

³⁶ TRO ¶ 508 (“switches serving the enterprise market do not qualify for the triggers”), and footnote 1560, emphasis added, (“when one or more of the three competitive providers is also self-deploying its own local loops, this evidence may *bear less heavily* on the ability to use a self-deployed switch as a means of accessing the incumbent’s loops.”)

³⁷ Given the limited amount of time available to conduct this research, much of the research was conducted informally since the formal discovery process would not provide the needed information in time for the rebuttal filing date, and our review is ongoing.

ITC^DeltaCom

Q. BellSouth identifies ITC^DeltaCom as a trigger. Is this appropriate?

A. No. Based on a review of information provided by ITC^DeltaCom ("ITCD"), it cannot be considered a self-providing trigger candidate in South Carolina.

Specifically:

- * ITCD's switches in South Carolina are enterprise switches. The lines served by ITCD's switches in South Carolina overwhelmingly serve digital enterprise customers. Specifically, ITCD has Begin Proprietary **** End Proprietary VGE lines. Of these, only Begin Proprietary ** ** End Proprietary are analog lines, a necessary predicate to being considered a mass market line. These analog lines are an incidental part of the ITC DeltaCom network, as a result of the merger with BTI. The bulk of the DSOs are grand-fathered the DSO lines which were already a part of the switch, i.e. these are legacy customers.
- * ITCD acquired BTI Telecom, as well as the switches associated with that company. BTI's business plan included some provisioning of DSO's for mass market customers, but that business plan is no longer in place, nor is that a part of the ITCD business plan.
- * ITCD is not actively providing service to the mass market using self-provisioned switches. ITCD did cut over analog customers to its switch in the years 1997-2000. Since that time, however, operational and economic problems with its UNE-L strategy led it to serve mass market customers using UNE-P. ITCD thus has some legacy retail mass market customers served on DSO loops connected to its South Carolina switches, but ITCD is not actively marketing such services to new customers. The vast majority of DSO loops provisioned to ITCD switches were provisioned

prior to the year 2000. DS0 loops provisioned since then were mainly to support changes to existing legacy customers on the company's UNE-L platform.

- * ITCD's direction in this regard is clear from examining the number of DS0 loops it has ordered in recent months. The de minimus use of DS0 analog loops by ITCD's switches is shrinking rather than growing.
- * ITCD is not likely to continue providing the few mass market services it provides today using its own switches. As noted above, ITCD no longer markets to DS0 analog customers (except for service via UNE-P), and provides analog service to customers only on a "grand-fathered" basis.
- * ITCD serves business customers almost exclusively. Any use of ITCD's switches to serve residential customers would be strictly incidental (such as company employees or business associates). ITCD markets its residential services through its Grapevine division, which offers service exclusively via UNE-P.

Q. Did the FCC recognize that enterprise switches (such as those operated by ITC^DeltaCom) would include some analog lines?

A. Yes. The FCC understood that enterprise switches would serve some analog lines, but that did not change its conclusion that enterprise switches should not be counted in a trigger analysis.³⁸ For instance, the FCC specifically recognized data that showed enterprise switches serving analog lines, and cited that data as evidence that simply counting switches did not address the critical distinction between the enterprise and mass markets:

³⁸

TRO ¶ 508.

Incumbent LECs claim that the Commission should remove virtually all unbundling obligations regarding local switching on a national basis simply because competitive carriers have deployed 1,300 switches and are serving, according to the BOC UNE Fact Report 2002, over 16 million lines with those switches. This argument, however, ignores significant differences in the evidence concerning the enterprise market and mass market. The record is replete with evidence showing that competitive LECs are successfully using their own switches to serve large business customers that require high-capacity loops (which can be connected to competitive carrier switches with few of the obstacles that affect voice-grade loops). For example, BiznessOnline.Com cites data compiled by a coalition of competitive carriers which examined six representative markets and found that approximately 90 percent of the loops used by competitive carriers in these markets are DS1 capacity or higher loops.³⁹

As the above paragraph makes clear, the FCC was under no delusion that carriers serving the enterprise market did so to the exclusion of all others. Rather, it understood that such carriers would be predominately using DS-1 (or higher) loops, even though some amount of analog activity might occur. Generally, the carriers cited by the FCC as evidence that competitive CLECs were using their switches to compete in the enterprise (but not mass) market relied on digital (DS-1 and higher) loops for 80% to 90% of their connectivity. The specific study referenced by the FCC is attached as Exhibit JPG-6 (Table 4).

Q. Are ITC DeltaCom's switches "enterprise switches" or "mass market switches"?

³⁹ TRO ¶ 437, emphasis added.

- A. ITC DeltaCom's has agreed to provide CompSouth with the line-counts on each of the switches claimed by BellSouth as trigger evidence. As shown below, each of ITC DeltaCom's switches should be considered "enterprise switches" based on the analysis used by the FCC.

Table 4: ITC^DeltaCom Lines

Switch	VGE Lines on Switch		Percent Enterprise
	DS-1	Analog	
	****	****	%
	****	****	%
	****	****	%
	****	****	%
Total	****	****	%

Denotes Confidential Information

Moreover, none of the lines served by ITC^DeltaCom are residential lines, further demonstrating that it is not a legitimate trigger candidate. Residential lines constitute roughly 80% of the mass market lines in BellSouth's South Carolina territory.⁴⁰ Any carrier that ignores 80% of the mass market cannot be plausibly considered to be "actively providing" mass market services.

KMC Telecom

⁴⁰

Source: ARMIS 2001.

Q. Based on your review of information provided by KMC, does KMC qualify as a trigger candidate?

A. No. Based on the information supplied by KMC, KMC should be considered an enterprise-oriented carrier and it should not be counted as a trigger candidate. I base this conclusion on the following:

- * KMC does not actively market services to customers who desire to be served over analog DS0-level loops. KMC actively markets only to customers who plan to purchase digital service at capacities that justify the use of DS1-level loops.
- * KMC does not actively market to nor does it provide residential service in South Carolina using its switches
- * There are two specific instances in which KMC may offer DS0 level service while marketing only to DS1 level enterprise customers. First, existing enterprise customers who order additional voice services from KMC may, on occasion, be at capacity on their existing DS1 facility, necessitating the provisioning of individual DS0 level facilities at an existing location. The second instance occurs when a prospective or existing enterprise customer wishes to include other locations into their service package, but those locations do not have sufficient volume to justify a full DS1. KMC would also provision individual DS0s to such locations.

Q. Are KMC's switches "enterprise switches" or "mass market switches"?

A. Only Begin Proprietary **%** End Proprietary of KMC's switch is used to provide analog based services. In contrast, Begin Proprietary **%** End

Proprietary of the switch (as measured in VGEs) is used to provide digital enterprise services. KMC is clearly an enterprise CLEC and its switches should not be counted in the self-provisioning mass market trigger analysis.

NuVox

Q. Is NuVox an active provider of mass market services in South Carolina?

A. No. Based on a review of information provided by NuVox, it cannot be considered a self-providing trigger candidate in South Carolina. Specifically:

- * NuVox was initially founded in 1997 under its former name of State Communications, Inc. (“State”). State initially focused on total service resale to residential and small business customers. This initial business plan was unsuccessful and resulted in a substantial loss of capital and other resources.

- * In 1999 the company changed its direction by revising its business model to deploy its own facilities and provide local and long distance telecommunications services as well as high-speed data services, web hosting and web design to small business customers. That same year the company changed its name to Trivergent Communications, Inc. While the company worked to deploy its own switching facilities and complete collocations, Trivergent entered into negotiations regarding a potential merger with Gabriel Communications, Inc. (“Gabriel”), a facilities-based Competitive Local Exchange Provider (“CLP”) headquartered in Chesterfield, Missouri. The merger of Gabriel and Trivergent was completed on November 1, 2000. The combined company adopted NuVox Communications as its new operating name in February of 2001. The company focused on continuing to build out its own facilities to provide broadband products and services to business customers.

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- * NuVox currently offers bundled local voice and data services, domestic and international long distance services, dedicated high speed Internet access including business class calling features and wide area network management, virtual private networks, website design and hosting and domain services in thirty markets across thirteen states. One of NuVox's standard product offerings, the NuBundle Business Package, includes unlimited high speed Internet access, web design, hosting and domain services, and feature-rich local and long distance services. *NuVox's principal business is to actively market and provide bundled voice and data services to certain small, medium and large size business customers within the company's limited marketing and service footprint. These bundled voice and data services are provided utilizing digital connectivity via T-1 (i.e. DS-1) loops.

- * The only residential customers that NuVox serves in South Carolina today are "legacy" customers being served via resale, who are holdovers from the former "State" marketing and sales efforts in South Carolina. NuVox is not actively providing residential analog voice service under its present business plan and has no plans to do so in the future.

Q. Are NuVox's switches enterprise switches or mass market switches?

A. NuVox is clearly an enterprise-oriented CLP and its switches are clearly enterprise switches. The basic method by which NuVox serves business customers' bundled voice and data needs in South Carolina is through a T-1 provisioned to the NuVox switch. NuVox may install equipment at the customer's demarcation point and at its collocation site at the ILEC wire center. As shown below, NuVox's switch serves a total of Begin Proprietary ** ** End Proprietary analog loops, Begin Proprietary ** %** End Proprietary of its total voice grade equivalent lines.

Table 5: NuVox Switch Data

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Switch	Analog VGE	Digital VGE	% Enterprise
	****	****	

** indicates confidential information

According to the standards applied by the FCC, NuVox's switch is an enterprise switch and it may not be counted as a mass market switch trigger.

Xspedius

Q. Is Xspedius a legitimate candidate as a self-providing mass market switching trigger?

A. No. Based on information provided by Xspedius:

- * Xspedius does serve a very limited number of small business customers in South Carolina utilizing its switches, Xspedius does not serve residential customers.
- * Xspedius actively markets to medium and large business enterprise customers with a high demand for a variety of sophisticated data-centric telecommunications services and solutions.
- * Xspedius currently serves only Begin Proprietary ** ** End Proprietary voice grade equivalent lines (VGEs) in South Carolina. Although Xspedius serves some analog lines, serving these DS-0 customers is not currently, and never has been, a significant part of Xspedius sales and marketing efforts.

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- * Xspedius' principal product is Complete Xchange,TM an integrated T-1 product designed for and marketed to sophisticated small and midsize companies with complex voice and data telecommunications needs.

- * Xspedius utilizes an individualized contract with each customer.

Given Xspedius' *exceedingly* small level of activity, it cannot plausibly be suggested that its operations -- operations that the company explain are focused on the enterprise market -- justify its being counted as a mass market switch trigger.

Q. Have you reviewed BellSouth data that further supports the analysis above (i.e., that these carriers are enterprise, not mass market)?

A. Yes. In response to discovery, BellSouth provided the UNE-L activity for each of the trigger carriers for which it had data.⁴¹ This data is summarized in confidential form in Exhibit JPG-7 attached, with the most important statistic summarized below:

Table 6: Current UNE-L Activity

Company	In-Service Lines (VGE)		Annual Change	Percent Change
	November 2002	November 2003		
Analog (Mass Market)	5,322	4,209	-1,113	-21%
Digital (Enterprise)	9,120	16,200	7,080	78%

⁴¹ As shown in Exhibit JPG-7 (attached), BellSouth was unable to identify any UNE-L sales

As Table 6 shows, mass market activity is in broad decline, with enterprise-level competition continuing to grow. This data further supports the conclusion that BellSouth's claimed trigger companies, in fact, operate "enterprise switches" that are not to be counted as mass market switch triggers.

Q. Does this conclude your rebuttal testimony?

A. Yes.

to two of its claimed trigger companies.